

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

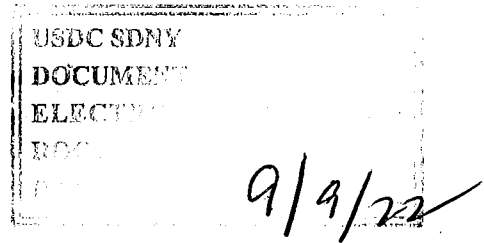
CHANTAL Y. SMITH,

Plaintiff,

-against-

ST. JOSEPH'S MEDICAL CENTER;  
MARGRETT CUSOMANO; HUMAN  
RESOURCE,

Defendants.



22-CV-5231 (VB)

ORDER OF SERVICE

VINCENT L. BRICCETTI, United States District Judge:

Plaintiff brings this *pro se* action under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e to 2000e-17, alleging that her employer discriminated against her based on her race, color, religion, and gender. Based upon Plaintiff’s allegations, the Court also construes Plaintiff’s complaint as also asserting claims under the New York State and City Human Rights Laws. *See McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 158 (2d Cir. 2017) (holding that where a *pro se* plaintiff’s factual allegations supported claims under “well-known” provisions of state law, district courts must construe the complaint as asserting claims under those laws, “regardless of [plaintiff’s] failure to check the appropriate blank on a form complaint”). By order dated August 10, 2022, the Court granted Plaintiff’s request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees.

**STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also

dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they *suggest*,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

## DISCUSSION

### A. Human Resource

Plaintiff, who was employed by St. Joseph’s Medical Center, names as a Defendant, “Human Resource.” Plaintiff’s claims against this Defendant must be dismissed. “[T]he only proper defendant in a Title VII claim is the plaintiff’s employer . . . .” *Mira v. Kingston*, 218 F.

Supp. 3d 229, 235 (S.D.N.Y. 2016), *aff'd*, 715 F. App' x 28 (2d Cir. 2017) (summary order), *cert. denied*, 139 S. Ct. 126 (2018). Because “Human Resource” is not Plaintiff’s employer, Plaintiff’s claims against this Defendant are dismissed.<sup>1</sup> *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

**B. Service on St. Joseph’s Medical Center and Margrett Cusomano**

Because Plaintiff has been granted permission to proceed IFP, she is entitled to rely on the Court and the U.S. Marshals Service to effect service.<sup>2</sup> *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendants St. Joseph’s Medical Center and Margrett Cusomano, through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each Defendant. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon each Defendant.

If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63

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<sup>1</sup> Although Margrett Cusomano is not Plaintiff’s employer, this Defendant may be held liable under state law. *See Tomka v. Seiler Corp.*, 66 F.3d 1295, 1317 (2d Cir. 1995); *Feingold v. New York*, 366 F.3d 138, 158 n.19 (2d Cir. 2004).

<sup>2</sup> Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summonses and the complaint until the Court reviewed the complaint and ordered that the summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

(2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if her address changes, and the Court may dismiss the action if Plaintiff fails to do so.

### CONCLUSION

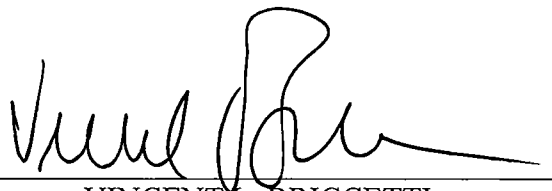
The Court dismisses without prejudice Plaintiff's claims against "Human Resource." *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

The Clerk of Court is instructed to issue summonses for Defendants St. Joseph's Medical Center and Margrett Cusomano, complete the USM-285 form with the addresses for these Defendants, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: September 9, 2022  
White Plains, New York

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

VINCENT L. BRICCETTI  
United States District Judge

**DEFENDANTS AND SERVICE ADDRESSES**

1. St. Joseph's Medical Center  
127 South Broadway  
Yonkers, New York 10701
2. Margrett Cusomano  
c/o St. Joseph's Medical Center  
127 South Broadway  
Yonkers, New York 10701